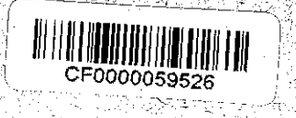
Cr.f. 923/98

DB (Cri)

XII-189 / (Jail)
C. J. R. 11/94/2,000



APPEAL OF PRISONER

No. 7438 Name नारायण राव

Father's name लक्ष्मण राव साकिन ग्राम - सरसींवा, थाना - सोनी नगर

Residence जिला - रायपुर (म.प्र.) Age 34 वर्ष खुराखू बैकरी के पास रायपुर

Sentenced to आजीवन कारावास सश्रम On 6/3/98

Under section 302 I.P.C. ₹ 500/- या एक वर्ष by अपर सत्र न्यायाधीश सरसींवा जिला - रायपुर (म.प्र.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not – Yes / No

No. 7438 Name नारायण राव S/o लक्ष्मण राव

Confined in केन्द्रीय Jail रायपुर (म.प्र.)

No. 98/विधि Dated 27/3/1998

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ मा.न्या.वा.प्रथम श्रेणी/मु.ए.54 मा.उच्च न्यायालय म.प्र. जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

सलग्न :- S.T. No. - 89/95 की सत्य प्रतिलिपि

Superintendent,
Central Jail Raipur. (M.P.)

with in time

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

.....

Date of receipt in Appellate Court .....

(P. T. O.)

AFR

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No. 935/98

Narayan Rao

Vs.

State of Madhya Pradesh

JUDGEMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

HON'BLE SHRI L.C.BHADOO ,J.

Sd/-
L.C. BHADOO
Judge

POST FOR JUDGMENT ON 9th MARCH 2006

Sd/-
DHIRENDRA MISHRA
Judge

(16)

HIGH COURT OF CHHATTISGARH AT BILASPUR

DB : Hon. Shri L.C. Bhadoo & Hon. Shri Dhirendra Mishra,JJ

Criminal Appeal No. 935 of 1998

Appellant : **Narayan Rao**

Versus

Respondent : **State of Madhya Pradesh.**

Shri R.K.Sharma, Advocate for the appellant.

Shri U.N.S.Deo, Additional Public Prosecutor with Shri Akhil Mishra, P.L. on behalf of the State.

JUDGMENT
(09.03.2006)

Per Dhirendra Mishra,J

The appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure questioning the legality and correctness of the judgment passed by Additional Sessions Judge, Baloda Bazar in Session Trial No. 89/95 by which learned Additional Session Judge after holding the accused/appellant guilty under section 302 of the IPC for causing the homicidal death of his wife namely Preeti has sentenced him to undergo imprisonment for life.

2. The case of the prosecution in brief is that Preeti was the wife of the accused/appellant. On 10.12.1994 when Preeti was cleaning the house the appellant abused and beat her and after pouring kerosene on her set her on fire. Thereafter, the appellant took her to Primary Health Centre Sarsiwan where Dr. B. Chaurasiya PW-15 sent an information P-13 to the Station House Officer of Police Station Sarsiwan to the effect that Preeti, the wife of the appellant was brought

to C.D. Sarsiwan as a case of burn. Station House Officer vide memo of P-12 addressed to the Assistant Surgeon, Primary Health Centre requested the doctor to examine Preeti and submit his report. Thereafter, the doctor examined Preeti and found that patient was not fully conscious and smell of kerosene was emanating from her body. Doctor further found that Preeti had sustained 75 per cent third degree burn injuries which was fatal to life. Station House Office of Police Station Sarsiwan was advised to shift the patient immediately to District Hospital for proper treatment. Station House Officer of Police Station Sarsiwan vide memo P-17 dated 10.12.1994 inquired whether Preeti was in a position to give her statement or not on which Dr. Chaurasiya vide memo of Ex P-14 informed that she was not able to give statement as she was not fully conscious. Thereafter, Assistant Surgeon, Primary Health Centre, Sarsiwan vide memo of Ex P-16 referred Preeti to D.K. Hospital, Raipur. In-charge of Police out post, D.K. Hospital Rauipur vide memo dated 12.12.1994 (P-21) addressed to Chief Medical Officer, D.K. Hospital, Raipur inquired whether the deceased was in a position to give statement or not. G.M. Ansari, the Naib Tehsildar and Executive Magistrate (PW-21) recorded the dying declaration of Preeti on 12.12.1994 vide Ex. P-23. On the information given by Krishna Rao, ward boy of D.K. Hospital that the patient Preeti, wife of Narayan Rao who was admitted in the hospital after receiving 90 per cent burn on 10.12.1994 had died at 1.00 a.m. on 15.12.1994. merg intimation of Ex P-4 was registered. Thereafter, Dehati Nalsi dated 15.12.1994 (P-20) was also registered at Police out post, D.K. Hospital, Raipur mentioning therein that on 12.12.1994 Bharat Rao son of Bodhan Rao informed in the police out post that on 12.12.1994 his niece Preeti was set on fire by Narayan Rao and he admitted her for treatment for her burn injuries and she wished to give her statement. On the basis of Dehati Nalsi offence under section 302 of the IPC was registered against the accused/appellant. Her dying declaration was recorded by the Executive Magistrate Shri G.M. Ansari in which she stated that Narayan Rao had set her on fire after pouring kerosene on

her body. On inquiry her father also stated that Narayan Rao had set Preeti on fire. Inquest report over the dead body was performed vide Ex P-7. Body was sent for post mortem examination to the Assistant Surgeon, Raipur vide P-22. Dr. D.C. Jain (not examained) conducted the post mortem examination on the body of the deceased and submitted his report P-22. Post mortem report has been proved by prosecution witness Dr. Arvind Nerulwar, PW-20, the Demonstrator at D.K. Hospital, Raipur as the doctor who performed autopsy has not been examined. In the post mortem report it is mentioned that the deceased had sustained 80 per cent third degree burn injuries and infection was also found. Crime No. 124/1994 was registered in the Police Station Sarsiwan after receipt of the diary from the police station City Kotwali, Raipur on 17.12.1994. spot map P-17 was got prepared by Halka Patwari. The report from the Forensic Science Laboratory with respect to chemical analysis of seized articles is Ex P-24. According to the FSL report smell of kerosene was emanating from wearing apparels of the deceased, bed sheet and hair lock of the deceased.

3. After completion of the investigation the charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Baloda Bazar who in turn committed the case to the Court of Sessions Judge Raipur from where the learned Additional Sessions Judge, Baloda Bazar received the case on transfer for trial.

4. Learned Additional Session Judge, framed charge under section 302 of the IPC against the accused/appellant who abjured his guilt.

5. Prosecution in order to establish charge against the accused has examined 21 witnesses in all. Thereafter statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case and pleaded that he is innocent and has been falsely implicated in the case. The accused/appellant has further stated in his

statement that he tried to save his wife and in the process of saving her he had also sustained burn injuries.

6. There is no eyewitness to the incident and the case of the prosecution rests on the dying declaration of the deceased P-23 recorded on 12.12.1994. The principle on which dying declaration is admitted in evidence is indicated in the legal maxim *nemo moriturus praesumitur* – a man will not meet his Maker with a lie in his mouth.

7. The constitutional Bench of the Supreme Court in the matter of **Laxman vs. State of Maharashtra** reported in **(2002) 6 SCC 710** has held as under:

> **"The situation in which a man is on the deathbed is very solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral in writing and any adequate method of communication where by words or by signs or otherwise will suffice provided the indication is positive and definite. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently,**

what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he had recorded the dying declaration".

8. In the matter of P.V.Radhakrishna Vs. State of Karnataka reported in (2003) 6 SCC 443 Hon'ble the Supreme Court has held that though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration is true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

9. In the light of above principle acceptability of the dying declaration in the instant case has to be considered.

10. Learned counsel for the appellant submits that after Preeti sustained burn injuries on 10.12.1994, the appellant had tried to extinguish the fire and in that process he also sustained burn injuries over his hand, chest and arm. He had immediately taken Preeti to Primary Health Centre, Sarsiwan for treatment where Dr. Chaurasiya PW-15 had treated her as also the appellant. Preeti had sustained 90 per cent burn injuries and she was not fully conscious and as such she was not in a position to give dying declaration. The doctor referred Preeti to D.K. Hospital, Raipur for further treatment. Thereafter, the appellant took her to D.K. Hospital, Raipur and admitted her there. The doctor did not find any injury over the person of the deceased except burn injuries. It is further contended that there is no medical evidence available on record to show that thereafter the deceased regained consciousness and she was fully conscious to give statement on 12.12.1994, the date on which alleged dying declaration was recorded by G.M. Ansari PW-21. Dying declaration is a suspicious document as there is no evidence available on record to demonstrate as to who authorized the officer to record the dying declaration. Learned counsel for the appellant further argues that before recording the dying declaration the Magistrate did not inquire about the condition of the injured as to whether she was in a fit condition to depose or whether she was able to understand the question and answer the same properly. It is further contended that father of the deceased PW-11 and brother Pradeep Rao PW-12 have not supported the case of the prosecution. They did not lodge any report after the incident. The document in question is a suspicious one on the ground that though the deceased stated on 12.12.1994 that she was burnt by the appellant, no offence was registered by the Police till 15.12.1994 the date on which she died. Preeti and the present appellant were married

about 8 to 10 years earlier to the incident and they had three children and a ten year old daughter namely Sarika and were living peacefully.

11. On the other hand learned counsel for the respondent/State supports the impugned judgment of the trial Court and submits that the conviction can be based solely on dying declaration and the dying declaration recorded by the magistrate can be acted upon without any corroboration and without any certificate from the doctor that at the time of recording of statement the deceased was in a fit condition to depose.

12. We have heard learned counsel for the parties and perused the material available on record.

13. The conviction is based on dying declaration of Ex.P-23 recorded by PW-21 G.M. Ansari Naib Tehsildar and the Executive Magistrate. The only question to be considered before this Court is whether the Court below was justified in arriving at the conclusion on the basis of dying declaration P-23 that the appellant after pouring kerosene on Preeti set her on fire? G.M. Ansari PW-21 has stated in his statement that he was Naib Tehsildar and Executive Magistrate in Raipur at the relevant time. He had gone to D.K. Hospital, Raipur to record dying declaration of Preeti as per the order of A.D.M. Police constable had taken him to Preeti for recording of her statement. Doctor on duty permitted him to record her statement. He introduced himself and stated that he had come to record her statement. Doctor on duty gave a certificate that Preeti was able to depose. Thereafter, he recorded her statement. He went on questioning and recorded her replies in Ex. P-23 which bears his signature. He has further stated that in reply to his questions Preeti has stated that accused poured kerosene on her body while she was alive and set her on fire. Preeti further stated that she was voluntarily deposing. In the cross examination he has further stated that he did not remember at what time he received the memo of ADM. He stated that he had sent the order along with the statement of Preeti to the

concerned Police station. He has further stated that he did not remember as to where he had gone to record the statement of Preeti. After putting four questions he had put his signature at the bottom. However, as he had forgotten to ask the last question, therefore, he asked the last question and as Preeti was not able to sign he made entries to this effect and certified the same with his signatures.

14. From the perusal of document of P-23 it is found that at the top of this document there is endorsement that at present the patient can give statement and bears signature with date. However, it is not clear as to who is the person who had signed it and what is his designation. Ex. P-23 is written on both sides. However, front page of the document does not bear the signature. In the back side of the document after putting his signature in the middle the Magistrate has asked the further question whether the factum of setting her on fire by her husband has been stated by her under duress? She replied in negative. Thereafter, he had again put his signature and at the end of the back page in the left corner he made a tip " fingers of both the hands are burnt therefore her signature or thumb impression could not be taken".

15. After perusing the evidence and other material available on record, we are of the considered opinion that the dying declaration in the instant case cannot be made a basis to hold the appellant guilty for the offence in the absence of any corroboration for the following reasons:-

a) as pointed out in the foregoing paragraphs the incident occurred on 10.12.94 at 7-8.00 am. The police of police station Sarsewan was promptly informed by the doctor about the incident and Preeti was medically examined and it was found that she was not fully conscious as she had sustained third degree burn injury which was fatal to life. In reply to query of the Station House Officer the doctor stated

that Preeti was not able to give statement as she was not fully conscious. In the cross examination Dr.Chourasiya had stated that he did not notice any injury over the body of the deceased except burn injuries. Third degree burn injuries are excessively painful which may affect the mental balance of the injured and the possibility of death within 24 to 48 hours was there. He has further stated that because of excessive burn capacity to make a statement is affected. The patient becomes unconscious and thereafter enters into coma which results in death.

b) Except the statement of Dr. Chourasiya P.W.-15 there is no evidence of any other doctor on record to show that deceased regained consciousness thereafter as the prosecution has not filed and proved bed head ticket of Preeti and has not examined the doctor who treated her during five days of her admission in D.K.Hospital, Raipur.

c) It is true that certificate of the doctor regarding fitness of the declarant to make declaration is not *sine qua non* to accept the dying declaration in the evidence and the same is rule of caution and prudence. But in the instant case since there is certificate of the doctor as described above, prosecution ought to have examined the doctor on duty who certified the deceased. Moreover the Magistrate before recording the statement of the deceased did not put any preliminary question to the patient with a view to satisfy himself that the patient was in a fit condition of mind to understand the question and reply the same.

d) The statement was recorded on 12.12.94 at about 2.00 p.m. However there is no document available on record to show that when the request was made by the police to P.W.-21 G.M.Ansari Nayab Tahsildar for recording the statement of the patient and who authorized him to do so. In the cross examination this witness has stated that he recorded the statement as per the orders of ADM however he did not recollect as to at what time he received the order and returned the copy of the said order to the concerned police station. However there is no document to show that the Magistrate was in fact authorized by the ADM to record the dying declaration of Preeti. P.W.-19 Sheetala Prasad Singh the Outpost incharge, D.K.Hospital, Raipur who recorded the Dehati Nalishi P-20 has no where stated that he requested G.M.Ansari or the ADM concerned to depute a person for recording the statement of Preeti.

e) Author of P-23 G.M.Ansari has stated that he along with a police constable went to D.K.Hospital, Raipur to record the statement. After recording the statement he sent the statement so recorded along with the order of ADM to the police station. However no offence was registered by the concerned police station on the basis of dying declaration on 12.12.94 and crime was registered only after Preeti died on 15.12.94 under Section 302 of the IPC vide Ex.P.20. This creates a serious doubt regarding the document of Ex.P-23.

f) The endorsement at the top of P-23 mentions that "at present patient can give statement" with

signature and date. However neither the name nor the designation of the person making the above endorsement is present. The Executive Magistrate also did not recollect the name of the doctor on duty who gave the certificate to him.

g) The front page of the dying declaration does not bear the signature of the Magistrate.

h) The manner in which the statement has been recorded and even after completion the additional question was put to her creates a suspicion in our mind. In this regard we are fortified with the judgment of the Supreme Court in the matter of **Chacko Vs. State of Kerala reported in (2003) 1 SCC 112** wherein it is held that the dying declaration appearing to be so arranged so as to accommodate the space above the thumb impression of the deceased, genuineness of the same becomes doubtful and it cannot be relied upon for convicting the accused-appellant. In this case also a tip was inserted in the vacant space of the dying declaration which makes the same doubtful.

i) P.W.-11 Ramchandra Rao Bhonsle, the father of the deceased has stated in paragraph No.8 of his statement that the statement of his daughter was recorded in the presence of doctor and police after ousting him. However, the statement was recorded by the police in the presence of his son and brother in law of the accused.

j) In these circumstances we are of the considered opinion that it would not be safe to convict the appellant only on the basis of dying declaration and

we intend to look for corroboration from other evidence.

16. The prosecution has examined P.W.-1 Draupadi Bai, P.W.-2 Bhagbali & P.W.-3 Shiv Prasad who are the neighbours of the appellant. All these three witnesses have not supported the case of the prosecution and they have been declared hostile.

17. P.W.-3 is the immediate neighbour of the appellant. As per the spot map of P-17 the house of this witness is adjacent to the house of the deceased. From the perusal of the spot map it appears that in fact the incident took place in the kitchen which is described as 'A' in the map where burnt articles of Preeti were found. Preeti was found lying at the spot marked as 'B' in the map in burnt condition and distance from A to B is 25 ft. where as accused is shown to be standing at the spot marked as 'C' and this witness saw the deceased from the spot marked as 'D'. The distance between 'B' and 'C' is 6 ft. and 'C' to 'D' is 4 ft. He has further stated that Narayan informed him that his wife has committed self immolation whereupon he saw that she was burning. He asked the appellant to extinguish fire by pouring water whereupon he poured water on her.

18. Learned trial Court relying on the evidence of this witness who has been declared hostile by the prosecution has arrived at the conclusion that the appellant was no trying to extinguish fire even though his wife was burning and this circumstance is a strong circumstance which corroborates the dying declaration of Ex.P-23 that in fact the accused had set Preeti on fire. P.W.-11 Ramchandra Rao Bhonsle is the father of the deceased who has turned hostile by the prosecution. This witness in examination in chief has stated that his daughter did not give any information before her death regarding any harassment or beating by the accused. However in the cross examination after denying the suggestion of harassment he admitted that his daughter was set on fire by the accused after pouring kerosene. Similar is the

statement of P.W.-12 Pradeep Rao Bhonsle brother of the deceased who has stated that accused came to his house at Mahasamund with his sister who was in a burnt condition. Thereafter he along with his mother and sister went to D.K.Hospital, Raipur where they admitted his sister. But he did not disclose any thing as to who set Preeti on fire. He has further stated that Preeti did not disclose any thing about the accused before the incident. Thereafter he was declared hostile. He has denied the suggestion that the accused used to beat Preeti before the incident and thereby used to disturb her. However in the cross examination he stated that on being asked by his father and maternal uncle she stated that accused beat her and set her on fire as a result of which she died. In cross examination he had also admitted that when accused brought his sister to Mahasamund he had also sustained burn injuries and he got disturbed after looking to the condition of the accused and his sister. He further stated that condition of his sister was not such that she could tell any thing. Thereafter they proceeded to Raipur and admitted his sister in D.K.Hospital for treatment.

19. Testimony of the hostile witness cannot be relied on for basing conviction. Testimony of the hostile witness can not also be used to corroborate the dying declaration as per the judgment of Supreme Court in the matter of **Munnu Raja & Another Vs. State of Madhya Pradesh** reported in **(1976) 3 SCC 104** as they have resiled from their police statement and as such they do not have regard for truth. Thus, looking to the contradictory nature of the statements of the above witnesses in the examination and cross examination we are of the considered opinion that the court below was not justified in relying upon the statement of above witnesses who were declared hostile by the prosecution, for the purpose of corroborating the dying declaration.

20. P.W.-20 Sarika, the daughter of the appellant has stated that three days before the incident there was quarrel and *maar peet* between her mother and father. On the date of incident when she returned after

tuition at about 8.00 am in the morning one lady informed her that her mother and father are admitted in the hospital. She went to the house and found kerosene sprayed over and burnt clothes. Thereafter she went to the hospital and saw that her mother was writhing and was not able to talk and her father was standing there. In the cross examination she has admitted that hand of her father was also burnt. Her father took her mother to Mahasamund and thereafter to D.K.Hospital Raipur. She has further stated that her father employed in Tube well Department as Watchman and her maternal uncle is lineman in the Electricity Department and who had retired. She further stated that her father used to purchase clothing etc. for her mother after getting salary and all the members were living peacefully.

21. Thus, from the statements of the parents, daughter and neigbours of the deceased the prosecution has not been able to establish that the relationship between the deceased and appellant was strained to such extent and the appellant could have a motive to kill his own wife though there is evidence that there was some minor dispute some three days back thereto but this alone cannot be considered to make a strong motive to cause death of the deceased.

22. Apart from the other circumstances from perusal of the record we find that the inquest conducted over the body of the deceased has not been established as the police officer performing inquest has not been examined. No seizure of wearing apparels of the deceased has been proved and in the absence of evidence to the seizure of the articles the report of the FSL regarding existence of kerosene in the seized articles is of no consequence. The Investigation has not been fair as from the evidence of the doctor and other witnesses it is clear that the appellant also sustained injuries in the said incident, however the same has been suppressed by the prosecution. Bharat Rao P.W.-18 gave information on 12.12.94 in the police outpost D.K.Hospital, Raipur to the affect that her niece Preeti was set on fire by her husband Narayan Rao who admitted her in the hospital for treatment. However, the

above information has been suppressed as no offence was registered on the basis of information given by Bharat Rao. Bharat Rao has been examined as P.W.-18 but he has not stated that he gave the information on 12.12.94 as mentioned in the Dehati Nalishi. In the above circumstances it is clear that the prosecution has deliberately suppressed the nature of information given by Bharat Rao.

23. The Investigation has not been fair as from the evidence of the doctor and other witnesses it is clear that the appellant also sustained burn injuries in the said incident, however the same has been suppressed by the prosecution. Bharat Rao P.W.-18 gave information on 12.12.94 in the police outpost D.K.Hospital, Raipur to the affect that her niece Preeti was set on fire by her husband Narayan Rao who admitted her in the hospital for treatment. However, the above information has been suppressed as no offence was registered on the basis of information given by Bharat Rao. Bharat Rao has been examined as P.W.-18 but he has not stated that he gave the information on 12.12.94 as mentioned in the Dehati Nalishi. In the above circumstances it is clear that the prosecution has deliberately suppressed the nature of information given by Bharat Rao.

24. In the light of the aforesaid discussion and material available on record the that the appellant sustained burn injuries over his hand in the same incident, he immediately took the deceased to the hospital and thereafter again took the deceased to Mahasamund from there to D.K.Hosptial, Raipur and was admitted there for treatment, the defence of the appellant appears to be more probable that the deceased sustained burn injuries of her own and the accused sustained injuries while trying to save his wife by extinguishing fire and the prosecution has failed to prove by cogent and reliable evidence, the involvement of the accused/appellant in the commission of the offence. It is settled law that the prosecution has to establish its case beyond reasonable doubt whereas the defence has only to probablise its case from the material available on record.

25. In the result the appeal stands allowed and the impugned judgment of the trial Court is set aside. Appellant be set at liberty if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge